IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 17TH DECEMBER 2007 / 26TH AGRAHAYANA 1929

WP(C).No. 37255 of 2007(I)

(ORDER IN I.A.1030/07 IN CMA NO.19/2007 OF THE SUB COURT, NEDUMANGAD)

PETITIONER:

SHAMNATH A.RAHIM, S/O. ABDUL RAHIM,
DILSHAD MANZIL, VADAKKUMBHAGOM, KAZHAKUTTOM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS:

1. **SEENA, D/O. VEDAVATHY,**
   AGED 45 YEARS, SREE SAILAM, KUNDARA, KOLLAM.

2. **SAINA, D/O. VEDAVATHY,**
   AGED 39 YEARS, VARMA HOUSE, KOPPAM, VITHURA,
   CHITTUVEETTU MURI, THOLIKKODU VILLAGE,
   THIRUVANANTHAPURAM.

3. **LAJI, S/O. SREEDHARAN,**
   AGED 45 YEARS, VARMA HOUSE, KOPPAM, VITHURA,
   CHITTUVEETTU MURI, THOLIKKODU VILLAGE,
   THIRUVANANTHAPURAM.

4. **SAJU, S/O. SREEDHARAN,**
   AGED 39 YEARS, VARMA HOUSE, KOPPAM, VITHURA,
   CHITTUVEETTU MURI, THOLIKKODU VILLAGE,
   THIRUVANANTHAPURAM.

5. **V.H. SANIL, S/O. HARIDAS,**
   AGED 38 YEARS, VARMA HOUSE, KOPPAM, VITHURA,
   CHITTUVEETTU MURI, THOLIKKODU VILLAGE,
   THIRUVANANTHAPURAM.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 17/12/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J

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W.P.(C) No.37255 OF 2007

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Dated this the 17th day of December 2007

JUDGMENT

This writ petition is preferred against the order of the Sub Court, Nedumangad in I.A.No.1030 of 2007 in C.M.A.No.19 of 2007. It is an application for issuance of a Commission to count the number of rubber trees standing in the property and it had been allowed by the court below. It is challenging that order, the present writ petition is filed.

2. C.M.A itself is filed against the order of the Addl.Munsiff, Nedumangad in I.A.No.1567 of 2007 in O.S.No.210 of 2007. Respondents, viz., defendants in the suit contended that the suit is not maintainable and the appropriate court is to decide is the court dealing under Section 47 of the C.P.C. The said point was answered and injunction was disallowed. So it is the very maintainability of the suit, that is under challenge and the main point to be considered in the C.M.A. would also be on that basis. Therefore it is not necessary for the issuance of a Commission at this stage to count the number of rubber trees. The court may consider the C.M.A. itself and dispose it of in accordance with law and in case the court interferes with the

order of the court below then the court can give directions regarding the issuance of a Commission.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-